

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Brown, Van H.)
Application Serial No. 10/661,201)
Filed September 12, 2003)
For: Pet Chew Toy)

FAX RECEIVED
MAR 15 2004
PETITIONS OFFICE

DECLARATION OF VAN H. BROWN

I, Van H. Brown, hereby declare the following:

1. I have sufficient capacity to testify regarding matters about which I have personal knowledge.

2. I am the owner of Carolina Prime Pet, a pet product design and manufacturing business based in Murphy, North Carolina. I personally interacted with Christopher A. Weinberg ("Mr. Weinberg") throughout the time period relevant to the Petition for Access filed in the U.S. Patent & Trademark Office ("the Patent Office") on behalf of Mr. Weinberg relative to the above-referenced nonprovisional patent application ("the Petition"). Therefore, I have extensive personal knowledge regarding the facts relevant to the Petition.

3. I have Bachelor of Science and Master of Science degrees in Chemistry from Western Carolina University. Since 1981, combining my chemical background with an interest in animals, I have designed, manufactured, marketed, and overseen the manufacture of a wide variety of food and other products intended for consumption and/or use by animals and humans, such products including livestock feed, fish feed, and fish-related products. Continuing in this field, in 1997 I founded Carolina Prime Pet, a business primarily devoted to the design, manufacture, and marketing of chew toys and chew treats for pets such as dogs. Previous to and in the course of owning and operating Carolina Prime Pet, I have become conversant in various

FAX RECEIVED
MAR 15 2004
PETITIONS OFFICE

EXHIBIT 1

methods for manufacturing pet chew toys and treats, including cold extrusion of meat jerky and various treat forming methods using primarily a porkskin substrate.

4. My business relationship with Mr. Weinberg began with me supplying pig ears to Mr. Weinberg for resale as chew toys for pets. At that time—and to the best of my knowledge, to this day—Mr. Weinberg merely serves as a broker of pet products without owning or operating any design or manufacturing facilities relating to pet products. To the best of my knowledge, Mr. Weinberg has no independent knowledge or experience regarding the design and manufacture of pet products, as I provided all such information during my involvement with Mr. Weinberg. In fact, during our relationship Mr. Weinberg stated many times that he wished he was creative and that if I would create new products, he could sell them.

5. During the course of our supplier-customer relationship, Mr. Weinberg indicated to me that he wanted to locate new products to expand the offerings of his pet product brokerage business. At the time, I was also interested in pursuing new pet products for Carolina Prime Pet, my pet product design and manufacturing business. Mr. Weinberg and I agreed to travel to China together to investigate the pet product manufacturing facilities in that country with a view toward arriving at some new pet products to manufacture and/or market. On this informal basis and without striking any verbal or written agreements regarding any business relationship with one another, during summer 2002 Mr. Weinberg and I traveled to China together.

6. During our trip to China, Mr. Weinberg and I visited a variety of pet product manufacturing facilities. Mr. Weinberg suggested to me that we should have a Chinese manufacturer replicate one or both of two dog chew toys already being marketed in the United States by third parties. I advised Mr. Weinberg that the dog chew toys in question were apparently patented in the United States and therefore could not be marketed in the United States

by either of us. However, before we left China I informed Mr. Weinberg that I had conceived a new pet chew toy that could be manufactured in China using my knowledge and experience regarding cold extrusion of meat jerky, various other treat forming methods I had used in my business, and some of the manufacturing methods I had observed in China. Specifically, I conceived the invention when I observed the low-moisture method of porkskin treat preparation used by the Chinese and realized that this method would be ideal for incorporating the fragile but tasty cold-extruded jerky in the center of almost any configuration of treat. Adding to my conception was my awareness from my manufacturing experience with porkskin that the skin itself could be flavored and/or provided with an external coating to further enhance the product. This pet chew toy, which I conceived in China, is the subject of the present patent application.

7. Before we left China, I described my new chew toy in detail to Mr. Weinberg, at which time Mr. Weinberg became animated over the marketing possibilities of the product. During this discussion, and referring to the new chew toy I had conceived, Mr. Weinberg said to me "I hope you'll let me sell it" or words to that effect. In response, without any awareness of the requirements for inventorship under United States patent law, and to encourage the formation of a mutually beneficial business relationship between Mr. Weinberg and I, I said to Mr. Weinberg "I'll even put you on the patent" or words to that effect. Thus, when I contacted Jeff Schwartz, my United States patent attorney, to have a provisional patent application disclosing the new chew toy prepared and filed, I indicated to Mr. Schwartz that Mr. Weinberg and I were co-inventors and should be listed as such on the provisional patent application. The provisional patent application, listing Mr. Weinberg and I as co-inventors, was filed in the Patent Office by Mr. Schwartz on September 12, 2002 and was subsequently assigned the serial number 60/410,098 by the Patent Office ("the '098 provisional").

8. During the fall of 2002 and the early winter of 2002-2003, Mr. Weinberg and I attempted to negotiate a formal agreement to govern our business relationship regarding the new chew toy conceived by me and disclosed in the '098 provisional, as well as another new chew toy conceived by myself and disclosed in a separate U.S. provisional patent application. We were preparing to show the new chew toys at a pet product trade show in February 2003. Although some negotiations took place, Mr. Weinberg declined to enter into a formal written agreement with me before the February 2003 trade show but indicated to me that our discussions were "as good as signed" or words to that effect, and that a written agreement could be drafted later. To my understanding, Mr. Weinberg and I had a verbal arrangement that, among other things, we would share equally in the commodity products available to sell as treats, share in each other's sales of the newly created chew toy products, and form an entity called Blast Bros., LLC to own the business and whatever patents might issue covering the new chew toy product I conceived in China. On this basis, Mr. Weinberg and I went forward with exhibiting the new chew toys at the February 2003 trade show.

9. However, my understanding of the business relationship Mr. Weinberg and I were attempting to form was disavowed by Mr. Weinberg when, during the trade show, he refused to share the available amount of a commodity product between us. In addition, subsequent to the trade show, I obtained some thirteen documents to clear a container of U.S.-manufactured jerky, a component of the new chew toy product, for delivery to China. Although Mr. Weinberg repeatedly indicated that he would send me my portion of the proceeds from his sales of the multiple containers of chew toys manufactured using the jerky sent to China, Mr. Weinberg never made any such payment and generally ceased communicating with me, further disavowing my understanding of the business relationship we were forming. In fact, I have yet to receive

any such payment. For at least these reasons, no business relationship or agreement between Mr. Weinberg and I ever came to fruition.

10. The statements in paragraphs 5 and 6 of Mr. Weinberg's petition declaration regarding the manufacturing of the new chew toy warrant some correction and clarification. After Mr. Weinberg and I returned from China, I formulated and worked with a U.S. manufacturer to perfect the extruded meat jerky. Mr. Weinberg and I took samples of the product back to China to have final product samples manufactured and during that time the confidentiality agreements filed with the Petition were initiated. New cost for the equipment to manufacture and dry the cold-extruded jerky was in excess of \$1,000,000. Therefore, Mr. Weinberg and I planned to have the U.S. manufacturer supply the jerky and if sufficient sales volume developed, I would then search for used equipment that would enable me to manufacture the jerky at my facility. My manufacturing of the jerky would reduce the total treat cost less than 10%. There was no part of the plan that was ever contingent on manufacturing this component in-house. The Chinese-manufactured jerky we found was near the same price as the U.S.-manufactured jerky but I had more confidence in the quality of ingredients used by the U.S. manufacturer, as well as confidence that the U.S.-manufactured jerky could be shipped to China for assembly of the product with minimal spoilage risk. Therefore, Mr. Weinberg's reported 10 trips to China for the sole purpose of locating a Chinese jerky manufacturer were unrealistic, because he has no expertise to select such a manufacturer and it was only because of temporary initial cost concerns that outsourcing of this component was pursued.

11. When the deadline for filing the present nonprovisional application drew near, I consulted with Mr. Schwartz, my patent attorney, and he questioned me regarding inventorship. It was at this time that I informed Mr. Schwartz of my prior conception of the invention being

claimed in the nonprovisional application and the lack of any contribution from Mr. Weinberg to the conception of the claimed invention. On this basis, Mr. Schwartz determined that I should be the sole inventor listed on the nonprovisional application. Before this time I was not aware of any legal requirements for inventorship under U.S. patent law.

12. I have never entered into any written agreements with Mr. Weinberg. All the verbal attempts by Mr. Weinberg and I to form a business relationship with one another failed to come to fruition. I have never assigned any interest in the present nonprovisional application or the underlying invention to Mr. Weinberg, Blast Bros., LLC, or any other individual or entity.

13. Based on the collapsed business relationship between Mr. Weinberg and I, including our previous disagreements and the strained relations they have caused, I believe that allowing Mr. Weinberg to gain access to the present nonprovisional application is likely to cause significant financial damage to me and my business by forcing me and my business to further contest whatever claims Mr. Weinberg might make to the application, the underlying invention, and/or proceeds from sales of products embodying the invention.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

DATE: April 15, 2004



Van H. Brown